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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

October 15, 1986

REPLY TO
ATTN OF:

M/S 613

William D. Maer, Attorney
Heller, Ehrman, White & McAuliffe
4100 First Interstate Center
999 Third Avenue
Seattle, Washington 98104

Re: In Re Pacific Wood Treating Corporation,
RCRA Docket No. 1085-09-26-3008P

Dear Bill;

Enclosed is a proposed Consent Agreement and Final Order, which I have labelled Draft #2. I believe the proposal conforms with recent discussions between EPA and you. I have also enclosed a marked version of Draft #1 which demonstrates exactly what changes have been made.

If the proposal is acceptable to your client, please let me know. I can then have a final version of the agreement and order sent to you for the appropriate signature. I will also inform Judge Nissen's clerk that settlement has been achieved.

Please make it clear to your clients that EPA intends that the activities described in this document must be completed in a timely fashion. Any failure to follow the agreement would result in a demand for the penalty and for completion of the activities, plus any further penalties as may be appropriate. Enforcement of this order would be in the form of a civil action in federal District Court.

If you have further comments or questions on this proposal, please contact me at 442-1191.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Henry Elsen".

D. Henry Elsen
Assistant Regional Counsel

Enclosures



DRAFT

2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

IN THE MATTER OF:

Environmental Protection Agency,

Complainant,

v.

Pacific Wood Treating Company,

Respondent.

RCRA Docket No. 1085-09-26-3008P

CONSENT AGREEMENT AND FINAL ORDER

A Complaint and Compliance Order was issued against the Respondent, Pacific Wood Treating Corporation ("PWT"), in this action, pursuant to Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928, et seq. The Complaint and Compliance Order was issued on September 20, 1985, and alleged violations of RCRA; and the delegated RCRA program in the State of Washington, whose regulations are found at Chapter 173-303 of the Washington Administrative Code (WAC), as set forth

1 below. In full and complete settlement of the matters alleged
2 in the September 30, 1985 Complaint and Compliance Order, and
3 pursuant to 40 CFR § 22.18, the following Consent Agreement and
4 Final Order is agreed to by all parties, and entered against
5 Respondent Pacific Wood Treating Corporation.
6

7 I. FINDINGS OF FACT

8 1. Respondent owns and operates the Ridgefield Brick
9 and Tile land disposal site, located at 3510 N.W. 289th Street,
10 Ridgefield, Washington. The site is a hazardous waste landfill
11 consisting of approximately three quarters of an acre, on the
12 outskirts of Ridgefield, Washington. In this document, the site
13 will be referred to as the PWT/RBT facility or the landfill.
14

15 2. Respondent submitted a Part A hazardous waste permit
16 application for the PWT/RBT facility to EPA on May 25, 1983. The
17 application stated that hazardous waste disposed in the landfill
18 was ash from the PWT wood-waste boiler plant contaminated with
19 the regulated hazardous wastes D004 (arsenic) and K001 (bottom
20 sediment sludge from the treatment of wastewaters from wood-
21 preserving processes that use creosote and/or pentachlorophenol).
22 The hazardous waste was first received at the landfill in
23 1979, and was last received on January 25, 1983.

24 3. The PWT/RBT facility is subject to the provisions
25 of RCRA, including the Hazardous and Solid Waste Amendments of 1984,
26 and the delegated State of Washington program, and to applicable
27

1 regulations found at WAC 173-303, including the interim
2 status standards found at WAC 173-303-400. Those standards
3 incorporate by reference the interim status standards of 40 CFR
4 part 265, Subpart F through R.
5

6 4. Closure of the PWT/RBT facility was done by the
7 Respondent between September 15, 1983 and January 16, 1984, under
8 supervision of the Washington State Department of Ecology
9 ("Ecology"), and pursuant to a closure plan submitted to Ecology
10 by the Respondent. That closure did not provide for a ground-
11 water monitoring system which met the requirements of
12 40 CFR part 265, Subpart F for landfills. The plan also did not
13 include provisions which addressed the regulatory requirements
14 for post-closure care or post-closure financial assurance.

15 5. Leachate from the landfill, a hazardous and dangerous
16 waste by definition, is discharged from the toe drain at the
17 landfill. This waste is not managed in accordance with the
18 generator requirements of 40 CFR Part 262.12(c), nor does Respondent
19 have a permit to dispose of hazardous waste on site as required
20 by 40 CFR § 270.1(c).

21 CONCLUSIONS OF LAW

22
23 6. Based upon the foregoing, Respondent is found to be
24 in violation of the following federal regulations, which are
25 incorporated by reference in WAC 173-303-400:
26

27 a. 40 CFR § 262.10(b), regarding recordkeeping, and/or
28 the land disposal requirements of 40 CFR Parts 264, 265 or 270,

1
2 regarding the management of leachate collected from the landfill
3 (see the comment following 40 CFR § 265.310(d)(2) regarding the
4 treatment of leachate);

5
6 b. 40 CFR §§ 265.90-94 and 265.310(b), which requires
7 any land disposal facility to maintain a ground water monitoring
8 system in full compliance with 40 CFR Part 265, Subpart F during
9 the closure and post-closure period for a landfill;

10 c. 40 CFR § 265.145, which requires the establishment
11 of documents demonstrating compliance with the financial assurance
12 requirements for post-closure care of the landfill.

13
14 AGREEMENT

15
16 7. Respondent admits the jurisdictional allegations of
17 this Agreement, and admits the Findings of Fact and Conclusions
18 of Law contained in this Agreement.

19
20 8. Respondent acknowledges the issuance of the final
21 order attached to this Agreement, including the assessment of
22 civil penalties therein. Respondent further acknowledges that
23 any payment of any penalties pursuant to this Agreement and Final
24 Order does not relieve the Respondent from its legal duty to
25 comply with the requirements of the Final Order, nor would
26 the payment of penalties prevent the enforcement of the Compliance
27 Order Activities of this Final Order, nor would the payment of
28 the assessed penalties relieve it of its duty to comply with
applicable provisions of RCRA and applicable provisions of State

1
2 of Washington laws and regulations governing the disposal of
3 hazardous (dangerous) wastes.
4

5 9. Respondent waives any right to a hearing on, or
6 appeal from this Agreement and Final Order.
7

8 DATED: _____ For Respondent Pacific Wood Treating
9 Corporation
10

11 DATED: _____ For Complainant Environmental
12 Protection Agency
13

14 FINAL ORDER

15 1. Based upon the foregoing Findings of Fact and
16 Conclusions of Law, which are incorporated herein by reference,
17 Respondent Pacific Wood Treatment Corporation is hereby found in
18 violation of the delegated State of Washington Dangerous Waste
19 Statute, and accompanying regulations.
20

21 PENALTY ASSESSMENT
22

23 2. Respondent is assessed a civil penalty of fifteen
24 thousand dollars (\$15,000.00) for these violations. No interest
25 shall be charged on this amount.
26

27 3. The payment of the assessed penalty is suspended
28 and deferred to October 30, 1987, at which time they shall become
due and payable without further notice or proceedings UNLESS the

1
2 activities described in paragraphs 5 through 7 are performed
3 in a timely fashion. If the activities described in paragraphs 5
4 through 7 are performed in a timely fashion, the assessed penalty
5 shall be wholly excused automatically without further notice and
6 proceedings.

7
8 4. The assessed penalty shall become immediately due,
9 notwithstanding paragraph 3, if any of the described activities
10 do not occur on the dates described herein.

11 COMPLIANCE ORDER ACTIVITIES

12
13 5. Within thirty (30) days of the date of this Order,
14 Respondent shall submit documentation demonstrating the lawful
15 management and disposal of leachate collected from the landfill
16 known as the Ridgefield Brick and Tile Company (RBT landfill or
17 landfill). This documentation shall demonstrate full compliance
18 with 40 CFR Part 262 or 40 CFR § 261.5(g) through the establishment
19 of procedures and practices for the proper off-site disposal of
20 any leachate produced or collected from the landfill.

21
22 6. Within sixty (60) days from the date of this Order,
23 the Respondent shall demonstrate compliance with the financial
24 assurance requirements of 40 CFR Part 265, Subpart H, verifying
25 compliance with the post closure requirements for financial
26 assurance, or, if such compliance is impossible despite the best
27 efforts of the Respondent, shall submit appropriate financial
28 records and a proposed schedule for the establishment of a
trust fund to ensure compliance with the Subpart H regulations.

1
2 7.(a) Within sixty (60) days of the date of this order,
3 the Respondent shall submit a plan and schedule to EPA for the
4 proper re-closure of the RBT landfill, in accordance with the
5 applicable regulations of 40 CFR part 265, Subpart G. In parti-
6 cular, the plan shall address the installation of a ground
7 water monitoring system at the landfill which is in compliance
8 with 40 CFR Part 265, Subpart F, and which would provide
9 sufficient hydrogeological information to satisfy the requirements
10 of 40 CFR § 270.14(c). This plan shall include provisions
11 which will ensure that the system shall be monitored for all
12 applicable parameters of 40 CFR §§ 265.92 and 93 on a quarterly
13 basis. The plan shall also provide for a soil sampling plan
14 to determine whether any releases of hazardous or dangerous waste
15 from the former leachate collection system has occurred. This
16 closure plan shall be reviewed and approved by EPA according to
17 the procedures of 40 CFR § 265.112(d).

18
19 (b) Upon final approval of the plan by EPA,
20 Respondent shall implement the approved plan at the RBT landfill
21 according to the schedule contained therein.

22 GENERAL PROVISIONS

23 8. For each requirement described in paragraphs 5
24 through 7, the Respondent shall file a signed statement
25 which verifies the extent to which the conditions specified
26 have or have not been met or fulfilled. These signed statements
27 shall be mailed to EPA within two business days of the due date
28 described in the paragraphs.

1
2
3 9. By deferring penalties herein, the burden of
4 proving that payment of those penalties remains deferred and
5 suspended is hereby placed upon the Respondent.

6 10. By written submission of a stipulation by both
7 parties, any date established in this Order may be modified.

8 11. All written submissions pursuant to this Order
9 shall be made to:

10 Kenneth Feigner, Chief
11 Waste Management Branch, M/S 533
12 Environmental Protection Agency
13 1200 Sixth Avenue
Seattle, Washington 98101 .

14 12. This order shall terminate upon the acceptance of
15 a delisting petition by EPA at any time prior to the completion
16 of the order's provisions.

17
18 IT IS SO ORDERED, this _____ day of _____,
19 1986.

20
21 _____
22 Charles E. Findley, Director
23 Hazardous Waste Division
24 EPA Region 10
25
26
27
28